IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2722 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUSINH K PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2722 of 1995

MR DS VASAVADA for Petitioner No. 1

Mr. Prachchhak, AGP for Respondent No. 1-3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 26/11/2004

ORAL JUDGEMENT

1. The grievance ventilated in this petition by the legal heir, the petitioner herein, of the deceased employee, is that the case of the petitioner was not

considered by the respondents-Authorities for appointment on compassionate ground, since, on the date of the sad demise of the father of the petitioner, i.e. on 30th May 1975, the petitioner was minor and, immediately on attaining major, the petitioner had made an application for appointment on any post suitable to his qualification.

2. It seems from the record that the first application was made on 28th September 1987 by the petitioner to the respondents-Authorities to appoint him on compassionate ground on the post of Clerk in view of his requisite qualification of passing SSC Examination and there was no other member in his family earning livelihood. The father of the petitioner had died in harness and as such there was no grievance with regard to performance or conduct of the father of the petitioner at the relevant point of time.

3. The Taluka Panchayat Office, Idar, by letter dated 18th June 1990, sought certain information in the form of documentary evidence from the petitioner and the petitioner was directed to make an application in a proforma prescribed for the compassionate appointment. Accordingly, the petitioner had submitted all the relevant documents. However, by order dated 7th May 1992, the respondent No.1 informed that the application of the petitioner was time-barred, and no other ground is mentioned therein.

4. The learned advocate for the petitioner has contended that the petitioner was minor at the time of the sad demise of his father, i.e. on 30th May 1975, and, immediately on his attaining major, he preferred an application on 27th September 1987 and he also complied with the directions of the respondents by submitting relevant documents in support of his claim.

5. Learned Assistant Government Pleader, Mr. Prachchhak, for the respondents, has submitted that, at the relevant point of time, the policy of the State Government, i.e. at the time of death of the father of the petitioner on 30th May 1975, was not in existence and the benefits were not extended to the survivors of the deceased employee who died in harness. The said policy for the first time came into existence as per the General Administration Department letter dated 30th October 1975 and the same was revised subsequently on 12th May 1997 which is produced at Annexure "E" to the petition. Therefore, the learned Assistant Government Pleader has submitted that the petitioner is not entitled as such for

compassionate appointment and cannot be given the benefit of the policy of the Government which came into existence on 30th October 1975 and revised from time to time.

6. I have heard the learned advocates for the parties. It is pertinent to note that the communication relied upon by the learned advocate for the petitioner dated 12th may 1977 at Annexure "E" and particularly clause 9 of the same, gives liberty to the State Government or the Competent Authority in exceptional cases to deviate from the prescribed procedure for filing application within five years in case of the minor children at the time of death of their father. Therefore, learned advocate Mr. Vasavada has submitted that an exception may be carved out in the present case and the petitioner is entitled to the benefit of the policy of the State Government which came into vogue since 30th May 1975, which may be relaxed in his favour, and he may be permitted to make a representation in this regard, to which the learned Assistant Government Pleader has no objection.

7. In the facts and circumstances of the case, it is directed that, in case, if the petitioner makes such representation, within two months from the date of receipt of writ of this order, with the request to the respondent-Authority to grant the concession and to treat his case on par with one of those exceptions for grant of compassionate appointment, with the prayer to relax the condition of the applicability of the policy of the State Government with regard to compassionate appointment, the respondent-Authority will apply its mind and consider the case of the petitioner sympathetically. The respondent-Authority shall decide the representation of the petitioner as expeditiously as possible, preferably within three months from the date of receipt of the representation made by the petitioner. It is made clear that no further representation or challenge to the said decision is permitted in case if the representation is decided against the petitioner.

8. With the above observation and direction, Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)